

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

WILLIAM BEESON,	)	
	)	
Plaintiff,	)	
	)	1:06-cv-1694-SEB-JMS
vs.	)	
	)	
MED-1 SOLUTIONS, LLC,	)	
	)	
Defendant.	)	

**ENTRY DENYING PLAINTIFF'S MOTION TO DECERTIFY CLASS**

This cause is before the Court on the Motion to Decertify the Class [Docket No. 100], filed by Plaintiff, William Beeson, on November 3, 2008. This is Beeson's second Motion to Decertify the Class filed with the Court in less than a month, and it advances the same arguments proffered in his previous motion [Docket No. 96]. For the reasons detailed in this entry, Plaintiff's Motion is again DENIED.

**Analysis**

The procedural facts set forth here mirror those in the Court's Entry [Docket No. 99] of October 24, 2008; the developments since that date are recounted as well. On September 25, 2008, the Court granted summary judgment for Defendant, Med-1 Solutions, LLC and entered final judgment accordingly. Thereafter, on September 29, 2008, Plaintiff filed a Notice of Appeal [Docket No. 88]. Subsequent to the filing of

Plaintiff's appeal, on October 7, 2008, Defendant timely filed a Motion to Amend the Judgment pursuant to Rule 59 of the Federal Rules of Civil Procedure [Docket No. 93]. In that motion, Defendant noted that no provision had been made for notification of the summary judgment disposition to individual class members. Accordingly, on October 8, 2008, the Court vacated the previously entered final judgment to allow for notification to the class members. Consistent with Local Rule 7.1(b),<sup>1</sup> the Court did not require Plaintiff to respond to Defendant's Motion to Amend the Judgment before granting the requested entry.

A week later, on October 15, 2008, Plaintiff filed a Response to Defendant's Motion to Amend, which we treated as a motion to reconsider and to set aside our decision to vacate the final judgment. We also addressed the portion of Plaintiff's response that amounted to a motion to decertify the class in this case. On October 24, 2008, the Court denied Plaintiff's Brief/Motion.<sup>2</sup> In particular as the Motion related to class decertification, the Court's entry discussed several reasons which it credited in favor of denial. First, we concluded that Plaintiff's motion was procedurally defective, in that

---

<sup>1</sup>"A non-dispositive motion or petition requiring the entry of a routine or uncontested order by the Judge or the Clerk may be ruled upon prior to the passing of the standard fifteen (15) day response deadline, unless the motion indicates that the adverse party objects or the Court otherwise has reason to believe a response may be forthcoming." Local Rule 7.1(b). We follow this rule again here in conjunction with this order, denying the motion without any need for Defendant's response.

<sup>2</sup>Plaintiff incorrectly states that the "Court entered a further Order that set aside the trial court decision to vacate the final judgment," referring to our Entry of October 24. The Court did not set aside its decision to vacate the final judgment, but rather stood by that decision entirely. See Order of 10/24/2008.

he attempted to convert a responsive brief into a motion. Apparently, Beeson believes that this procedural defect was the only basis for our ruling, because, in this second motion, he attempts to remedy that defect. To the contrary, however, we did substantively address the first motion to decertify, reasoning that: (1) decertifying the class is not the “judicially economical” course to take at this point; and (2) Beeson could not show that the class was improperly certified in the first instance, nor that subsequent discovery had shown that the factors of Federal Rule of Civil Procedure 23 (numerosity, common questions of law and fact, typicality, and adequate representation) were no longer satisfied. Order of 10/24/2008 at 3-4. On that basis, we denied the motion to decertify the class.

In ruling on this second motion by Beeson, we stand by the reasoning and judgments in our previous entry. Beeson submits no new argument(s) in his current motion beyond emphasizing the Court’s “discretion” to decertify the class (his other arguments are identical and merely repetitive of issues we have already addressed). No rationale convinces us to exercise our discretion to alter our prior decision, which fully dealt with his arguments. Moreover, the disposition he seeks here is likely barred by collateral estoppel, although a discussion of that principle is unnecessary, given the wholly unconvincing substantive arguments he advances.

Beeson originally sought class certification in this case; curiously, the gist of his current argument is that no such class exists. Clearly, he cannot have it both ways, and he certainly cannot be encouraged or permitted to file virtually the same motion again,

hoping for a different outcome, simply because he disagrees with the previous disposition. Whatever error he assigns or relief he seeks after we have ruled must be pursued on appeal, and the time for such an appeal will occur only after the class is notified of the Court's previously entered summary judgment decision.

Beeson's current Motion also makes clear that he misunderstands the status of his appeal.<sup>3</sup> The Court's explanation of this status in the previous order is repeated here in full:

Because Plaintiff appealed the original, imperfect final judgment prior to Defendant's Motion to Amend, it is necessary to resolve the seemingly nettlesome issue of whether this case is properly within our jurisdiction or whether it reposes with the Court of Appeals at this juncture. Fortunately, the Supreme Court has provided a rule that prunes all of the thorns from this issue. In Griggs v. Provident Consumer Discount Co., 459 U.S. 56 (1982), the Supreme Court held that the filing of a motion to alter or amend a judgment in district court under Rule 59 results in the destruction of a previously filed notice of appeal. Griggs, 459 U.S. at 61. Under the rule of Griggs, Plaintiff's appeal is "destroyed" as a consequence of Defendant's timely Motion to Amend. Moreover, because we shall not alter our decision to vacate the final judgment, Plaintiff's current appeal rests on no final judgment, and therefore may not properly be maintained. Therefore, Plaintiff must appeal, if he intends to do so, only after proper notice is given to individual class members and a subsequent final judgment is entered.

Order of 10/24/2008 at 4-5.

We reiterate and affirm this analysis in its entirety.

---


<sup>3</sup>One of the reasons Beeson advances in favor of decertification is that his "appeal could create confusion with class members." Pl.'s Br. in Supp. at 4. By this, we assume he means that notice of a grant of summary judgment against the class, followed by an appeal, could be confusing. This was an argument he proffered in his previous Brief/Motion, which we found unavailing; it is equally unavailing here. Furthermore, it evinces his mistaken belief that the case is pending on appeal. It is not, as we have explained above.

Given the repetitive nature of Plaintiff's second Motion, we must conclude that his attorneys misread (or misunderstood) the Court's Order of October 24, 2008, or that, in the face of an obvious denial, they decided to re-file their motion, perhaps to demonstrate their continued disagreement with our ruling. Either way, the motion fails to convince us to depart from our prior ruling, made only a week ago, which addresses and resolves the exact same issues.

***Conclusion***

Having considered Plaintiff's second Motion to Decertify the class, there being no reason to revise, amend or rescind our ruling, Plaintiff's Motion is (again) DENIED.

Date: 11/06/2008

  
SARAH EVANS BARKER, JUDGE  
United States District Court  
Southern District of Indiana

Copies to:

Eric D. Johnson  
KIGHTLINGER & GRAY  
ejohnson@k-glaw.com

Nicholas Ward Levi  
KIGHTLINGER & GRAY  
nlevi@k-glaw.com

Robert E. Stochel  
HOFFMAN & STOCHEL  
res@reslaw.org

Peter A. Velde  
KIGHTLINGER & GRAY  
pvelde@k-glaw.com

Glenn S. Vician  
BOWMAN, HEINTZ, BOSCIA & VICIAN  
bhbv2@netnitco.net